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Supreme Court, U.S.
FILED
JUN 27 1994
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93-1898

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

STATE OF FLORIDA,

Petitioner,

vs.

FREDERICK SMITH,

Respondent.

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

FREDERICK SMITH, Respondent in the above-styled cause hereby moves this Court, by his undersigned counsel, for leave to proceed in forma pauperis and in support hereof shows as follows:

1. An Affidavit in Support of the Motion to Proceed on Appeal in Forma Pauperis has been mailed to the Respondent and will be provided to this Court upon receipt. In the Affidavit Respondent sets forth the fact that he is indigent and unable to pay or give security for the fees and costs attendant to this proceeding.

2. Respondent was adjudged insolvent for the purposes of trial and of appeal in the appellate court in Florida and was

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represented there by appointed counsel.

WHEREBY, it is respectfully requested that Respondent be permitted to proceed in forma pauperis in this matter.

Respectfully submitted,

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

JAMES R. WULCHAK
ASSISTANT PUBLIC DEFENDER
FLORIDA BAR NO. 0249238
112-A Orange Avenue
Daytona Beach, FL 32114
(904)252-3367

MEMBER OF THE UNITED
STATES SUPREME COURT BAR

ANNE MOORMAN REEVES
ASSISTANT PUBLIC DEFENDER
FLORIDA BAR NO. 0934070

ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has mailed to the Honorable Robert A. Butterworth, Attorney General, 444 Seabreeze Boulevard, Fifth Floor, Daytona Beach, Florida 32118; and to Mr. Frederick Smith, 915 Cedar Drive, Melbourne, Florida 32901, on this 27th day of June, 1994.

JAMES R. WULCHAK
ASSISTANT PUBLIC DEFENDER

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1993

No. 93-1898

STATE OF FLORIDA, Petitioner,

vs.

FREDERICK SMITH, Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE FLORIDA FIFTH DISTRICT COURT OF APPEAL

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

ANNE MOORMAN REEVES
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COUNSEL FOR RESPONDENT

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State v. Smith 623 So.2d 1086 (Fla. 5th DCA 1994)	1
United States v. Ross 456 U. S. 798 (1982)	4
OTHER AUTHORITIES CITED:	
Article I, section 23, Florida Constitution	iii, 3, 4

QUESTION PRESENTED

Whether this Court should exercise its discretionary jurisdiction to entertain this case, whose decision rests squarely on this Court's decision in Florida v. Jimeno, 500 U.S. 248, 111 S.Ct. 1801, 114 L.Ed.2d 297 (1991) applying the fourth amendment to the Federal Constitution, and in addition can be sustained on independent state grounds pursuant to article I, section 23, the privacy clause of the Florida Constitution.

STATEMENT OF THE CASE

The respondent accepts the Statement of the Case as set out by the petitioner.

REASONS FOR DENYING THE PETITION FOR A WRIT OF CERTIORARI

THE DECISION OF THE COURT BELOW IS CORRECT INASMUCH AS IT FOLLOWS THE DICTATES OF THIS COURT EMBODIED IN FLORIDA V. JIMENO, 500 U.S. 248, 111 S.CT. 1801, 114 L.ED.2d 297 (1991), AND FURTHERMORE IT RELIES ON THE INDEPENDENT STATE GROUND OF A HEIGHTENED EXPECTATION OF PRIVACY PURSUANT TO ARTICLE I, SECTION 23, OF THE FLORIDA CONSTITUTION.

The petitioner seeks review of the decision of the Fifth District Court of Appeal of the State of Florida below ostensibly because of its belief that it conflicts with this Court's decision in Florida v. Jimeno, 500 U.S. 248, 111 S.Ct. 1801, 114 L.Ed.2d 297 (1991). In Jimeno, this Court emphasized that the "touchstone of the Fourth Amendment is reasonableness." 114 L.Ed.2d at 302. Although the petitioner asserts that the test revolves around what an officer may reasonably understand from a person's consent to search, this is only half the analysis.

The Jimeno opinion speaks of "'objective' reasonableness," or what the "typical reasonable person" would understand from the "exchange between the officer and the suspect." The opinion further points out that Jimeno ought to have known, based on his exchange with Officer Trujillo, who stated that he was looking for narcotics, that his consent to search his car would reasonably include consent to look in a paper bag--considering that a paper bag is a container that might hold drugs. Thus, the second half of the analysis is what the other party to the exchange might reasonably understand as the objective meaning of his consent to search.

In the case sub judice, Smith was not told of the object of the officer's search. The objective view of our society does not place a wallet in the generic class "contents." A wallet, because it is the repository of identifying documents and private papers, as well as purchasing power, is a very different order of thing from "contents" of a vehicle. This difference distinguishes Smith's consent from that of Enio Jimeno, and is supported by the precept that the scope of a search is generally defined by its expressed object, United States v. Ross, 456 U.S. 798 (1982). The appellate court below specifically based its affirmance of the trial court's suppression of the evidence found in Smith's wallet on this rule, reasserted by this Court in Jimeno.

Florida's privacy amendment also sustains the holding of the Fifth District Court of Appeal. As consent to a search of one's "person" does not include search of the groin, Davis v. State, 594 So. 2d 264 (Fla. 1992), so consent to search a car and its "contents" should not include one's wallet. Article I, section 23, Florida Constitution, protects persons from that kind of governmental intrusion. This amendment expands upon the freedom insured by the Federal Constitution, and this Court must respect its reach.

Contrary to the petitioner's interpretation of the decision at issue here, that decision does not create a search and seizure standard which depends on a suspect's subjective belief. Allowed

to stand, this decision will simply carry forward the rule of law as expressed in this Court's Jimeno decision.

CONCLUSION

For the foregoing rasons, Respondent respectfully requests this Court deny the Petition For a Writ of Certiorari requested by the State in this cause.

Respectfully submitted,

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

JAMES R. WULCHAK
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Chief, Appellate Division
112 Orange Avenue, Suite A
Daytona Beach, Florida 32114
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ANNE MOORMAN REEVES
Assistant Public Defender

COUNSEL FOR RESPONDENT

CONCLUSION

For the foregoing rasons, Respondent respectfully requests this Court deny the Petition For a Writ of Certiorari requested by the State in this cause.

Respectfully submitted,

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

JAMES R. WULCHAK
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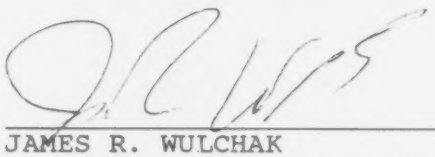
COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I, JAMES R. WULCHAK, a member of the Bar of the Supreme Court of the United States and counsel of record for Frederick Smith, the Respondent, hereby certify that on June 27, 1994, pursuant to Supreme Court Rule 28, I served a single copy of the foregoing to the Supreme Court of Florida with attached Appendix on each of the parties as follows: On the State of Florida, the Petitioner, by depositing said copy in the United States Post Office, Daytona Beach, Florida, with first class postage preparid, properly addressed to Assistant Attorney General Kellie Nielan, 444 Seabreeze Boulevard, Fifth Floor, Daytona Beach, Florida 32118, and Frederick Smith, 915 Cedar Drive, Melbourne, Florida 32901.



JAMES R. WULCHAK
Assistant Public Defender
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